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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA- EASTERN DIVISION

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15 STEVEN HILD,) No. EDCV 06-953 SH
16 v. Plaintiff,) MEMORANDUM DECISION
17 MICHAEL J. ASTRUE,)
18 Commissioner of Social Security)
19 Administration,)
20 v. Defendant,)
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I. PROCEEDINGS

22 Plaintiff filed a Complaint on August 29, 2006, seeking review of the
23 decision by the Commissioner of the Social Security Administration denying
24 Supplemental Security Income (SSI) payments. By October 12, 2006, both parties
25 consented to proceed before United States Magistrate Judge Stephen J. Hillman.
26 Defendant filed an Answer on January 16, 2007. The parties filed a Joint
27 Stipulation on May 4, 2007. The matter has been taken under submission.
28

II. BACKGROUND

Plaintiff has filed seven prior applications for SSI payments. Plaintiff filed the current application for SSI payments on January 30, 2004, alleging that he was unable to work due to stroke, seizures, breathing problems, depression, and a back condition. The Social Security Administration denied his claim. Thereafter, the plaintiff filed a request for reconsideration, which was denied. Plaintiff was afforded a hearing before an Administrative Law Judge (ALJ) on October 3, 2005.

In his decision, the ALJ found that the plaintiff retains the residual functional capacity to do light exertional work with some nonexertional limitations. (AR 24). Thus, the ALJ concluded that the plaintiff had not been under a “disability” at any time from January 30, 2004, through the date of his decision, and denied plaintiff’s claim for SSI benefits. (AR 25).

On January 19, 2006, the plaintiff sought review by the Appeals Council, which denied plaintiff's request for review. This action followed.

III. DISCUSSION

Under 42 U.S.C. § 405(g), this court reviews the Commissioner's decision to determine if: (1) the Commissioner's findings are supported by substantial evidence; and (2) the Commissioner used proper legal standards. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means "more than a mere scintilla", Richardson v. Perales, 402 U.S. 389, 401 (1971), but "less than a preponderance." Desrosiers v. Secretary of Health & Human Servs., 846 F.2d 573, 576 (9th Cir. 1988). This court cannot disturb the Commissioner's findings if those findings are supported by substantial evidence, even though other evidence may exist which supports plaintiff's claim. See Torske v. Richardson, 484 F.2d 59, 60 (9th Cir. 1973), cert. denied, Torske v. Weinberger, 417 U.S. 933 (1974); Harvey v. Richardson, 451 F.2d 589, 590 (9th Cir. 1971).

It is the duty of this court to review the record as a whole and to consider adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30

1 (9th Cir. 1986). The court is required to uphold the decision of the Commissioner
2 where evidence is susceptible of more than one rational interpretation. Gallant v.
3 Heckler, 753 F.2d 1450, 1453 (9th Cir. 1999).

4 Plaintiff first contends that the ALJ did not properly consider the treating
5 physicians' opinions of disability. Plaintiff alludes to medical reports from Dr.
6 Donald Underwood and two other physicians, whose names are illegible, from the
7 San Bernardino County Transitional Assistance Department (SBCTAD). In his
8 medical report dated on February 19, 2003, Dr. Underwood diagnosed the plaintiff
9 with "proximal femur & surgery" on the left hip with internal fixation. (AR 600).
10 He also stated that the plaintiff had a fracture fragment that "could be causing
11 pain," and that the plaintiff was temporarily disabled from February 19, 2003, to
12 March 19, 2003. (AR 600). On February 27, 2003, a different physician's medical
13 report indicated that the plaintiff has "Lumbar Discopathy," that the plaintiff was
14 temporarily disabled from February 27, 2003, to March 27, 2003, and that the
15 plaintiff has limitations of "no lifting greater than 15 lbs., no recurrent bending or
16 stooping." (AR 598). Lastly, the plaintiff refers to another physician's medical
17 report made on March 26, 2003. This physician diagnosed the plaintiff with
18 "lumbar discopathy - prognosis for working poor," and indicated that the plaintiff
19 was permanently incapacitated, and cannot perform any work. (AR 599).

20 Defendant contends that the ALJ properly disregarded the SBCTAD
21 physicians' medical reports in favor of the physicians' opinions of Drs. Moore,
22 Maze, and Ella-Tamayo. The court agrees with the defendant.

23 It is true that a treating physician's opinion is entitled to greater weight than
24 that of an examining physician. Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir.
25 1989), citing Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987). "The
26 treating physician's opinion is not, however, necessarily conclusive as to either a
27 physical condition or the ultimate issue of disability." Magallanes v. Bowen, 881
28 F.2d at 751, citing Rodriguez v. Bowen, 876 F.2d 759, 761-62 n.7 (9th Cir. 1989).

1 The weight given a treating physician's opinion depends on whether it is supported
2 by sufficient medical data and is consistent with other evidence in the records. 20
3 C.F.R. § 416.927 (2004). Moreover, the ALJ is not obligated to accept the
4 opinions of a treating physician. "The [Commissioner] may disregard the treating
5 physician's opinion whether or not that opinion is contradicted." Magallanes v.
6 Bowen, 881 F.2d at 751, citing Cotton v. Bowen, 799 F.2d 1403, 1408 (9th Cir.
7 1986). Where the opinion of the claimant's treating physician is contradicted, and
8 the opinion of a nontreating source is based on independent clinical findings that
9 differ from those of the treating physician, the opinion of the nontreating source
10 may itself be substantial evidence. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th
11 Cir. 1995). "It is then solely the province of the ALJ to resolve the conflict." Id.

12 Here, the ALJ properly gave more weight to the opinions from consulting
13 neurologists, Robert A. Moore, M.D., who evaluated the plaintiff on March 10,
14 2003, and Sarah L. Maze, M.D., who evaluated the plaintiff on May 26, 2004.
15 Both doctors' opinions may be considered substantial evidence as they were based
16 on independent clinical findings; each conducted a neurological examination, as
17 well as ordered a radiology report. Dr. Moore diagnosed the plaintiff with left hip
18 fracture, status post open reduction and internal fixation, and biomechanical low
19 back pain. In addition, he found that the plaintiff "has full use for pushing, pulling,
20 operating hand controls and using tools," as well as no neurological limitations in
21 terms of lifting and carrying. (AR 604). Dr. Maze noted that the plaintiff has
22 chronic lower back pain, and concluded that "because he [the plaintiff] has
23 sustained a left hip fracture and has questionable reduction in motion of the lumbar
24 spine, the patient [plaintiff] would be able to occasionally lift no more than 50
25 pounds and frequently lift no more than 20-25 pounds," and is "precluded from
26 repetitive bending, squatting, and stooping." (AR 666-67). Dr. Maze also found
27 that the plaintiff "is able to perform fine motor activities with his arms and legs."
28 (AR 667). Since the opinions of Drs. Moore and Maze were supported by clinical

1 tests and observation upon examination, the opinions amounted to substantial
2 medical evidence and were properly relied upon by the ALJ in order to determine
3 the claimant's residual functional capacity (RFC).

4 In addition, the medical records from what appears to be the treating
5 physicians do not support a finding of disability. If the treating records are old, or
6 not detailed, or if the treating doctor's ultimate opinion isn't supported by his
7 progress notes, the ALJ is not required to give substantial weight to the treating
8 doctor's opinion. See Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001)
9 (ALJ permissibly rejected treating physician's opinion when opinion was
10 contradicted by or inconsistent with the treatment reports). The ALJ indicated that
11 he gave little weight to the assessment form entitled, "Medical Opinion Re: Ability
12 to Do Work-Related Activities (Physical)," which was signed on October 12, 2004,
13 by a medical provider from the IBHS Community Health Care Clinic, stating that
14 the progress notes from January 15, 2003, and February 14, 2003, "do not support
15 the level of impairment endorsed in the assessment." (AR 20). Specifically, the
16 ALJ noted that the January 15, 2003, exam reported the plaintiff had lumbar spine
17 strain sprain which was only notable for back tenderness. The ALJ also noted that
18 the February 14, 2003, exam reported that the plaintiff asked his "treating source to
19 be placed on disability, and that the plaintiff "must show by X-ray or ortho consult
20 that he is deserving of disability." (AR 20, 689-690). "However, no objective
21 findings were indicated on exam." (AR 20). Therefore, the ALJ properly found
22 that the treating physicians' medical records do not support the finding of a
23 disability. Furthermore, in giving "more weight to the well-supported opinions" of
24 the examining physicians, Drs. Moore and Maze, the ALJ found that "none of
25 these sources support the level of functional impairment indicated in the
26 assessment" titled, "Medical Opinion Re: Ability to Do Work-Related Activities
27 (Physical)." Id.

28 The plaintiff also argues that the ALJ did not pose a complete hypothetical

1 to the vocational expert because the ALJ failed to incorporate the physical
2 impairments and functional limitations, particularly the comment, "prognosis for
3 working poor," as opined by the SBCTAD physician. (AR 599). In order for the
4 vocational expert's testimony to constitute substantial evidence, the hypothetical
5 question posed must "consider all of the claimant's limitations." Andrews, 53 F.3d
6 at 1044. However, the ALJ is not required to include limitations for which there
7 was no substantial evidence. See Osenbrock v. Apfel, 240 F.3d 1157, 1164-65
8 (9th Cir. 2001) (ALJ not bound to accept as true the restrictions set forth in the
9 hypothetical if they were not supported by substantial evidence). Since the ALJ
10 properly disregarded the medical reports by Dr. Underwood and the other
11 physicians from the SBCTAD, and gave more weight to the opinions of Drs.
12 Moore and Maze, the ALJ was not required to include the limitations noted on the
13 medical reports by the physicians from the SBCTAD.

14 Plaintiff's final contention is that the ALJ did not make proper credibility
15 findings because the ALJ's credibility analysis was insufficient and inadequate,
16 and did not provide 'clear and convincing' reasons for rejecting the plaintiff's
17 subjective complaints. Defendant argues that the ALJ did make proper credibility
18 findings by carefully considering the medical records, and by providing
19 sufficiently specific reasons for discrediting the plaintiff's testimony of disabling
20 pain.

21 The court finds that the ALJ made proper credibility findings, and
22 satisfactorily delineated why he found the plaintiff not credible. "An ALJ cannot
23 be required to believe every allegation of disabling pain, or else disability benefits
24 would be available for the asking, a result plainly contrary to 42 U.S.C. §
25 423(d)(5)(A)." Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989). The
26 Commissioner's assessment of plaintiff's credibility should be given great weight.
27 Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Even though a finding that
28 the claimant lacks credibility cannot be solely based on a lack of objective medical

1 support for the severity of pain, a finding that the claimant generally lacks
2 credibility is a permissible basis upon which an ALJ may reject excess pain
3 testimony. Morgan v. Apfel, 99 D.A.R. 1855, 1856 (9th Cir.(Or.)Feb. 25,
4 1999)(citations omitted). Here, the ALJ found not only that “The weight of the
5 objective evidence does not support the claimant’s claims of disabling limitations
6 to the degree alleged,” but also that “the claimant’s demeanor as a witness at
7 hearing was poor; he did not tell a consistent story.” (AR 22).

8 Moreover, if the Commissioner chooses to disregard plaintiff’s testimony,
9 the Commissioner must set forth specific cogent reasons for disbelieving it. Lewin
10 v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981). The Commissioner’s findings,
11 properly supported by the record, must be sufficiently specific to allow a reviewing
12 court to conclude that the Commissioner rejected plaintiff’s testimony on
13 permissible grounds and did not arbitrarily discredit plaintiff’s testimony regarding
14 pain. General findings are insufficient. Reddick v. Chater, 157 F.3d 715, 722 (9th
15 Cir. 1998); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1996)(citations omitted).
16 Rather, “the ALJ must specifically identify what testimony is credible and what
17 testimony undermines the claimant’s complaints.” Morgan, 99 D.A.R. at 1856.

18 Here, the ALJ cited specific reasons as to why he found the plaintiff’s
19 subjective allegations not fully credible. In evaluating credibility, the ALJ may
20 consider the claimant’s reputation for truthfulness, inconsistencies within the
21 claimant’s testimony or as between his testimony and conduct, the claimant’s daily
22 activities, work history, as well as testimony from physicians or third parties
23 concerning the nature, severity, and effect on the symptoms of which the claimant
24 complains. Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997)
25 (citations omitted).

26 The ALJ found that “the weight of the objective evidence does not support
27 the claimant’s claims of disability limitations to the degree alleged.” (AR 22).
28 Plaintiff’s self-serving statements may be disregarded if unsupported by objective

1 evidence. Bellamy v. Secretary of Health & Human Servs., 755 F.2d 1380, 1382
2 (9th Cir. 1985). The ALJ also specifically refers to the reports from Dr. Ella-
3 Tamayo, an internist; Dr. Moore, a neurologist; and Dr. Maze, another neurologist.
4 The ALJ found that Dr. Tamayo evaluated the plaintiff in February 2002, and
5 concluded that he could do light level work. (AR 21, 485-90). Dr. Moore
6 evaluated the plaintiff in March 2003, and concluded that the plaintiff could work
7 without any specific exertional limits and nonexertional limits. (AR 21, 601-04).
8 In addition, Dr. Maze determined that the plaintiff could do even medium level
9 work. (AR 21, 664-67). Moreover, the ALJ also noted that despite the plaintiff's
10 allegations of "disabling fatigue and weakness, he does not exhibit any significant
11 atrophy, loss of strength, or difficulty moving." (AR 22).

12 Furthermore, the ALJ found that the plaintiff "has painted a picture of a
13 person who is more disabled than he actually is," specifically pointing out that the
14 plaintiff uses a walker and cane when no physician has prescribed a walker, cane or
15 other assistive device, and that there is no objective support for the use of any
16 assistive device. (AR 21). The ALJ points out that Dr. Maze stated that there were
17 "no clinical findings warranting the use of a cane and observed that the claimant
18 actually ambulated better without the use of a cane." Id. Conservative or
19 infrequent treatment may be used by the ALJ to refute allegations of disabling
20 pain, see Johnson v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995), and the ALJ
21 determined that the plaintiff's "course of treatment has largely reflected a
22 conservative approach." (AR 22).

23 Although disability claimants should not be penalized for trying to lead
24 normal lives despite their limitations, when the level of their activities are
25 inconsistent with their claimed limitations, those activities have bearing on the
26 claimants' credibility. Reddick, 157 F.3d at 722. Here, the ALJ also found the
27 plaintiff not credible because the plaintiff "is able to independently manage his
28 own transportation and gets around by the bus," and because the plaintiff's

1 “activities of daily living belie his allegations of total disability. He goes out to
2 look for food and for ways of making money. He scavenges items to sell.” (AR
3 21). During the hearing, when the ALJ inquired about the plaintiff’s daily life
4 during the year and a half that he was living in a tin shed, the ALJ specifically
5 asked what the plaintiff was doing during the normal daylight hours when he was
6 not in the house. In response, the plaintiff stated that he was outside trying to find
7 some way of making some money: “I’d pick up some, you know, when I go
8 somewhere, I’d pick up something that, you know, someone threw away or
9 whatever and try to sell it but I, you know, didn’t do any good at it. I’d put it in the
10 green sheet and it didn’t do any good.” (AR 718-19).

11 Therefore, the ALJ gave sufficient reasons to discredit the testimony of the
12 plaintiff in finding that he told an inconsistent story, as well as that the pain the
13 plaintiff alleged to suffer from, did not correlate with the impairments the
14 physicians actually determined the plaintiff to have.

15 IV. CONCLUSION

16 In conclusion, the ALJ properly disregarded the SBCTAD physicians’
17 medical reports in choosing to rely on the substantial evidence provided by Drs.
18 Moore and Maze. As a result, the ALJ was not required to include the limitations
19 noted by any of the SBCTAD physicians in a hypothetical to the vocational expert.
20 Finally, the ALJ properly assessed the plaintiff’s credibility, and found it not
21 credible.

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V. ORDER

28 For the foregoing reasons, the decision of the Commissioner is affirmed and

1 plaintiff's Complaint is dismissed.

2 Date: June 19, 2007

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5 STEPHEN J. HILLMAN

6 UNITED STATES MAGISTRATE JUDGE

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